

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALVIN KIMBROUGH,
Petitioner,
vs.
MIKE KNOWLES, Warden,
Respondent.) No. C 03-1968 JSW (PR)
)
) **ORDER DENYING CERTIFICATE
OF APPEALABILITY AND
GRANTING *IN FORMA PAUPERIS*
STATUS ON APPEAL**
)
) **(Docket no. 51)**
)

Petitioner Alvin Kimbrough filed a pro se petition for a writ of habeas corpus challenging the constitutionality of his state conviction under 28 U.S.C. § 2254. Following briefing by the parties, this Court granted Respondent's motion to dismiss the petition as untimely in an order dated December 19, 2006 (docket no. 49). Petitioner has filed a request for a certificate of appealability, a notice of appeal and request to proceed *in forma pauperis* on appeal (docket no. 50).

Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Accordingly, the request for a certificate of appealability is DENIED (docket no. 51).

Petitioner has also filed an applications for leave to proceed in forma pauperis on appeal. *See Fed. R. App. P. 24(a).* Title 28 U.S.C. 1915(a)(3) provides that an appeal may not be taken in forma pauperis if the district court certifies that it is taken in bad faith. Although Petitioner did not show that reasonable jurists would disagree on the merits of his petition so as to warrant issuance of a certificate of appealability, the Court does not find that the appeal is taken in bad faith. Accordingly, the motion to proceed in forma

1 pauperis on appeal is GRANTED.
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The Clerk of Court shall forward this order, along with the case file, to the United
States Court of Appeals for the Ninth Circuit. Petitioner may also seek a certificate of
appealability from that court. *See United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir.
1997).

6 IT IS SO ORDERED.
7 2/5/2007
8 DATED: _____

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JEFFREY S. WHITE
United States District Judge